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ACTION HA-06

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FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC PRIORITY 7591
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AMEMBASSY BRASILIA
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ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

(☒) Release () Excise () Deny

Exemption(s):

Declassify: () In Part (☒) In Full **DECONTROL**

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Date Declassify on Reason

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USEEC; ROME FOR VATICAN; CINCSO FOR INTAFF; CINCLANT FOR POLAD

EO 12065: N/A

TAGS: SHUM, AR

SUBJECT: HUMAN RIGHTS SUMMARY: NOVEMBER 15-21, 1980

REF: BUENOS AIRES 8991

1. (U) BEGIN SUMMARY. HUMAN RIGHTS LAWYERS ADMONISHED. A
JUDGE REJECTS SUPREME COURT ORDER TO INVESTIGATE DISAPPEARANCES.
HUMAN RIGHTS LAWYER HAS TROUBLE GETTING PASSPORT. END SUMMARY.

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. (U) LAWYERS WARNED: THIRTY-SEVEN LAWYERS WHO PRESENTED
HABEAS CORPUS PETITION IN BEHALF OF 329 PEN
RISONERS, ASKING THAT THEY BE GIVEN THE RIGHT OF OPTION,

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HAVE BEEN ADMONISHED BY FEDERAL JUDGE PDERO NARVAIS. NARVAIS REJECTED THE PETITION FOR THE FIRST GROUP OF CASES HE REVIEWED, ARGUING THAT DETENTION UNDER PEN FOR THOSE ACCUSED OF CONNECTION WITH SUBVERSION DOES NOT CONSTITUTE UNCONSTITUTIONAL PUNISHMENT. THE JUDGE ADMONISHED THE LAWYERS SPONSORING THE PETITIONS FOR THE QUALITY OF THEIR BRIEF. THE JUDGE, IN ESSENCE, ACCUSED THE SPONSORING LAWYERS OF UNPROFESSIONAL BEHAVIOR IN PRESENTING A PETITION THAT CONTAINED "ERRORS AND INADMISSABLE OMISSIONS". THE JUDGE SAID THAT THE JOINT PETITION CONTAINED ONLY 319 NAMES SINCE TEN NAMES WERE REPEATED. IN ADDITION, HE SAID THAT 28 OF THOSE ON THE LIST CURRENTLY HAVE ANOTHER HABEAS CORPUS PETITION BEFORE ANOTHER COURT.

3. [REDACTED] COMMENT: SINCE LAST JUNE RESPONSIBILITY FOR PROFESSIONAL ETHICS AND STANDARDS FOR THE LEGAL PROFESSION HAS BEEN INVESTED IN THE COURTS RATHER THAN IN THE LAWYERS' PROFESSIONAL ASSOCIATIONS WHERE IT FORMERLY RESTED. HOWEVER, THIS PARTICULAR ACTION BY NARVAIS IS A PUBLIC REPRIMAND WITH LIMITED EFFECTS. IT IS NOT AN ANTECEDENT FOR SANCTIONS THAT CAN LEAD ULTIMATELY TO DISBARMENT. THE LAWYERS INVOLVED -- WHO INCLUDE SOME OF THE MOST PROMINENT HUMAN RIGHTS COUNSELS LIKE EMILIO MIGNONE AND AGUSTO CONTE MCDONELL -- ARE APPEALING. PRIVATELY THEY TELL US THAT THEY EXPECT THE APPEAL TO BE GRANTED. JUDGE NARVAIS' REFUSAL TO GRANT THE HABEAS CORPUS PETITIONS CONTRASTS WITH THE FINDING OF ANOTHER JUDGE RECENTLY THAT A PEN PRISONER MUST BE GIVEN RIGHT OF OPTION BECAUSE HIS CONTINUING DETENTION WITHOUT CONVICTION VIOLATES THE CONSTITUTION (REFTEL).

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4. (U) JUDGE REFUSES TO INVESTIGATE DISAPPEARANCE: JUDGE NARVAIS WAS IN THE NEWS WITH ANOTHER DECISION LAST WEEK. EARLIER THIS YEAR THE SUPREME COURT, WHOSE DECISIONS ARE NOT BINDING ON LOWER COURTS, ORDERED JUDGES TO FULLY INVESTIGATE DISAPPEARANCES WHEN THERE APPEAR TO BE SUBSTANTIAL GROUNDS FOR BELIEVING THAT GOVERNMENT AGENCIES WERE INVOLVED. THIS CASE GREW OUT OF A HABEAS CORPUS PETITION IN BEHALF OF "MACHEDO ET AL" THAT HAD BEEN REJECTED BY NARVAIS ON THE GROUNDS THAT THE GOVERNMENT HAD ASSURED HIM THAT NONE OF THOSE IN WHOSE BEHALF THE PETITION WAS FILED WERE DETAINED BY THE GOVERNMENT. IN REVIEWING THE CASE, NARVAIS AGAIN REJECTED THE PETITION IN BEHALF OF "MACHEDO ET AL" ARGUING THAT

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IN THE ABSENCE OF DEMONSTRABLE EVIDENCE THAT THE AUTHO-
RITIES ARE LYING WHEN THEY DECLARE THAT THEY ARE NOT
HOLDING THE PEOPLE ON WHOSE BEHALF A HABEAS CORPUS

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PETITION IS SUBMITTED, THE COURT MUST ACCEPT THE
GOVERNMENT'S WORD. NARVAIS QUOTED THE RECENTLY-
APPOINTED MEMBER OF THE SUPREME COURT, JUSTICE BLACK,
THAT IN SUCH MATTERS "OFFICIAL REPORTS CANNOT BE CALLED
INTO QUESTION SINCE THEY ENJOY THE PRESUMPTION OF TRUTH
WHICH CONSTITUTES THE BASIC ASSUMPTION OF OUR REPUBLICAN
FORM OF GOVERNMENT." JUDGE NARVAIS STATED THAT LEGAL
REMEMDIES ARE AVAILABLE WHEN IT IS SHOWN THAT THE STATEMENTS
OF THE GOVERNMENT ARE FALSE WHICH, HE DECLARED, HAS NOT
BEEN DEMONSTRATED IN THIS CASE. THE JUDGE DECLARED THAT
HABEAS CORPUS IS NOT AN APPROPRIATE INSTRUMENT FOR
PURSUING DISAPPEARANCES. OTHER INSTRUMENTS ARE AVAILABLE

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FOR INVESTIGATING THESE MATTERS, HE SAID. (HUMAN RIGHTS LAWYERS STATE TO US THAT THESE OTHER INSTRUMENTS ARE MUCH MORE TIME-CONSUMING THAN A HABEAS CORPUS PETITION). THE JUDGE'S DECISION CAN AND WILL BE APPEALED, WE ARE TOLD.

5. [REDACTED] HUMAN RIGHTS LAWYER'S PASSPORT DELAYED:
AGUSTO CONTE MCDONELL, ONE OF THE LEADING HUMAN RIGHTS LAWYERS AND ACTIVISTS IN ARGENTINA, EXPERIENCED AN UNUSUAL DELAY WHEN HE ATTEMPTED TO RENEW HIS EXPIRED PASSPORT ON OCTOBER 24. HE HAD PLANNED TO ATTEND THE OASGA IN WASHINGTON AS AN OBSERVER BUT THAT BECAME IMPOSSIBLE. HE TOLD US NOVEMBER 24 THAT THE GOVERNMENT WILL PROBABLY ISSUE HIS PASSPORT THAT SAME DAY. HE HAS BEEN GIVEN TO UNDERSTAND BY THE GOA THAT THE DELAY IN ISSUING THE PASSPORT IS RELATED TO "MY ACTIVITIES" AND EXPECTS THIS TO BE CLARIFIED IN A PRIVATE MEETING WITH THE GOVERNMENT NOVEMBER 24.

6. [REDACTED] COMMENT: A CONSIDERABLE NUMBER OF HUMAN RIGHTS ACTIVISTS FROM ARGENTINA TRAVELED TO WASHINGTON WITHOUT INTERFERENCE FROM THE GOVERNMENT. ONE WHO RENEWED HIS PASSPORT WITHOUT DIFFICULTY WAS THE SON OF NOBEL LAUREATE PEREZ ESQUIVEL WHO IS ACCOMPANYING HIS FATHER. WE HOPE TO KNOW MORE ABOUT THE REASON CONTE MCDONELL'S PASSPORT WAS HELD UP LATER IN THE WEEK. CONTE MCDONELL IS A CHRISTIAN DEMOCRAT WHO DESPITE HIS UNCOMPROMISING ADVOCACY OF HUMAN RIGHTS ISSUES HAS GENERALLY RETAINED THE RESPECT OF KNOWLEDGEABLE MEMBERS OF THE GOA.
SHLAUDEMAN

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